

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING )  
PHARMACY, INC. PRODUCTS LIABILITY )  
LITIGATION )  
\_\_\_\_\_  
THIS DOCUMENT RELATES TO: )  
Suits Naming the Tennessee Clinic )  
Defendants and the Saint Thomas Entities )  
MDL No. 2419  
Dkt. No 1:13-md-2419 (RWZ)

**TENNESSEE CLINIC DEFENDANTS AND SAINT THOMAS ENTITIES'  
ASSENTED-TO MOTION TO ALLOW MASTER ANSWERS**

The Tennessee Clinic Defendants<sup>1</sup> and the Saint Thomas Entities<sup>2</sup> (collectively, “the Defendants”) hereby move, with the assent of the Plaintiffs’ Steering Committee (“the PSC”), to allow them to file master answers in representative cases in lieu of answers in each of the cases in which they have been sued.

In support of this motion, the Tennessee Clinic Defendants and the Saint Thomas Entities state as follows:

1. The Tennessee Clinic Defendants and the Saint Thomas Entities, separately, filed motions to dismiss in lieu of filing answers to the Master Complaint and the dozens of individual complaints filed against them.<sup>3</sup>

2. On August 29, 2014, the Court issued a Memorandum Decision granting

<sup>1</sup> Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John W. Culclasure, MD; Debra V. Schamberg, RN; Specialty Surgery Center, Crossville, PLLC; Kenneth R. Lister, MD; Kenneth Lister, MD, PC; and Donald E. Jones, MD.

<sup>2</sup> Saint Thomas West Hospital f/k/a St. Thomas Hospital; Saint Thomas Health; and Saint Thomas Network.

<sup>3</sup> Dkts 770 771 779 893

in part and denying in part the various motions to dismiss.<sup>4</sup>

3. Pursuant to FED. R. CIV. P. 12(a)(4)(A), the Tennessee Clinic Defendants and the Saint Thomas Entities were required to file answers to the dozens of complaints against them by September 12, 2014.

4. On September 11, 2014, the Tennessee Clinic Defendants and the Saint Thomas Entities, with the assent of the PSC, filed a motion respectfully requesting an extension to September 30, 2014 to file their respective answers.

5. The parties have further conferred and agreed that the Tennessee Clinic Defendants and the Saint Thomas Entities each file separate Master Answers to the Master Complaint as well as one answer to a representative short form complaint as follows

- The Saint Thomas Entities will file an answer to the *Reed Short Form Complaint*, which is Dkt. No. 34 in Individual Case No. 1:13-cv-12565, including all incorporated allegations in the original complaint and attachments thereto (Dkt. No. 1);
- Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, a Professional Corporation, John W. Culclasure, MD, and Debra V. Schamberg, RN will file an answer to the *Reed Short Form Complaint*, which is Dkt. No. 34 in Individual Case No. 1:13-cv-12565, including all incorporated allegations in the original complaint and attachments thereto (Dkt. No. 1);
- Specialty Surgery Center, Crossville, PLLC, Kenneth R. Lister, MD, and

---

<sup>4</sup> Dkt. 1360.

Kenneth Lister, MD, PC, will file an answer to the *Bumgarner* Short Form Complaint, which is Dkt. No. 29 in Individual Case No. 1:13-cv-12679, including all incorporated allegations in the original complaint (Dkt. No 1).

6. The parties agree to stay the deadline for Donald E. Jones, MD to file answers in the two suits against him.<sup>5</sup> Accordingly, Dr. Jones will file answers at a time to be agreed upon later.

7. The Tennessee Clinic Defendants and the Saint Thomas Entities do not waive any defenses to claims or allegations not made in the answered complaints, and reserve the right to file answers to other Short Form Complaints as necessary to address other allegations, claims, and causes of action.

8. By filing answers in *Reed* and *Bumgarner*, the Tennessee Clinic Defendants and the Saint Thomas Entities do not waive their right to, at a later date, file dispositive motions on case-specific issues in these suits, or any other suits, including failure to comply with Tenn. Code Ann. § 29-26-121 and/or § 29-26-122.

WHEREFORE, the Tennessee Clinic Defendants and the Saint Thomas Entities respectfully request, with the assent of the PSC, that the Court grant their motion and enter an Order modifying their answer requirements as outlined herein.

---

<sup>5</sup> *Seiber v. Ameridose, LLC, et al.*, Case Nos. 1:13-cv-1868, 1:14-cv-10273; *Daugherty v. Total Healthcare Consultants, et al.*, Case No. 1:14-cv-10430.

Respectfully submitted,

**GIDEON, COOPER & ESSARY, PLC**

/s/ Chris J. Tardio

**C.J. Gideon, Jr.\***

**Chris J. Tardio\***

**Alan S. Bean\*\***

**Matthew H. Cline\***

315 Deaderick Street, Suite

Nashville, TN 37238

Ph: (615) 254-0400

Fax: (515) 254-0459

[chris@gideoncooper.com](mailto:chris@gideoncooper.com)

**Attorneys for the Tennessee Clinic  
Defendants**

\*Admitted pursuant to MDL Order No. 1.

\*\*Admitted *pro hac vice*.

**AND**

/s/ Sarah P. Kelly

Sarah P. Kelly (BBO #664267)

[skelly@nutter.com](mailto:skelly@nutter.com)

NUTTER McCLENNEN & FISH LLP

Seaport West

155 Seaport Boulevard

Boston, Massachusetts 02210

(617) 439-2000

(617) 310-9000 (FAX)

Yvonne K. Puig\*

Texas State Bar No. 16385400

[yvonne.puig@nortonrosefulbright.com](mailto:yvonne.puig@nortonrosefulbright.com)

Adam T. Schramek\*

Texas State Bar No. 24033045

[adam.schramek@nortonrosefulbright.com](mailto:adam.schramek@nortonrosefulbright.com)

Eric J. Hoffman\*

Texas State Bar No. 24074427

[eric.hoffman@nortonrosefulbright.com](mailto:eric.hoffman@nortonrosefulbright.com)

FULBRIGHT & JAWORSKI LLP  
98 San Jacinto Blvd., Suite 1100  
Austin, Texas 78701  
(512) 536-2450  
(512) 536-4598 (FAX)

Marcy Hogan Greer\*  
Texas State Bar No. 08417650  
[mgreer@adjtlaw.com](mailto:mgreer@adjtlaw.com)

ALEXANDER DUBOSE JEFFERSON &  
TOWNSEND LLP  
515 Congress, Suite 2350  
Austin, Texas 78701  
(512) 482-9300  
(512) 428-9303 (FAX)

***Attorneys for the Saint Thomas  
Entities***

\*Admitted *pro hac vice*

ASSENTED-TO:

Plaintiffs' Steering Committee

/s/ Ben Gastel  
Ben Gastel  
Branstetter, Stranch & Jennings, PLLC  
227 Second Ave. N.  
Fourth Floor  
Nashville, TN 37061-1631  
[beng@branstetterlaw.com](mailto:beng@branstetterlaw.com)  
(615) 254-8801

**CERTIFICATE OF SERVICE**

I, Sarah P. Kelly, certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Sarah P. Kelly  
Sarah P. Kelly